



Barham Park Trust Committee

14th January 2019

Report from the Operational Director, Environmental Services

Approval to apply to Charity Commission for permission to incur specified items of expenditure on Barham Park from the Trust's restricted funds

Wards Affected:	Sudbury
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	None
Background Papers:	None
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1.0 Purpose of the Report

- 1.1 This report seeks the approval of the Barham Park Trust Committee to seek the permission of the Charity Commission to spend a number of items of

expenditure on and for the benefit of Barham Park from the restricted funds of the Trust. The proposed items of expenditure include works to the trees, event field drainage works and preparing a schedule of works in respect of all of the existing windows, doors, frames and similar structures of the Barham Park building. A resolution from the Trust Committee is required before seeking permission to apply to the Charity Commission to spend such items of expenditure from restricted funds. If approval is granted by the Trust Committee, officers will submit the application to the Charity Commission which will consider the same under its powers under section 282 of the Charities Act 2011.

2.0 Recommendations

That the Barham Park Committee RESOLVES:

- 2.1 To approve the proposed items of expenditure up to the total estimated sum of £167k which are set out in the table in paragraph 3.1 of this report to be paid from the Trust's restricted funds and permanent endowment arising from the sale proceeds of 776 and 778 Harrow Road, Wembley HA0 2HE and seek permission of the Charity Commission to spend the aforementioned sum from the Trust's restricted funds using the procedure set out in section 282 of the Charities Act 2011.
- 2.2 To authorise officers to submit the necessary application for permission to the Charity Commission and delegate authority to the Operational Director Environmental Services to progress the application and deal with any issues, requirements and queries arising that are raised by the Charity Commission.
- 2.3 To authorise officers to give public notice of this resolution if it is directed to do so by the Charity Commission pursuant to section 283 of the Charities Act 2011.

3.0 Detail

- 3.1 A summary of the proposed items of expenditure which officers seek the approval of the Trust Committee to spend from the Trust's restricted funds are set out below.

Table of Proposed Items of Expenditure

Proposed Item of Expenditure	Estimated Cost in GBP (£)
Barham Park Tree Works	62,000
Schedule of works in respect of all of the existing windows, doors, frames and similar structures of the Barham Park building	10,000
Events Field Drainage Survey and Design	5,000
Events Field Drainage Works	90,000
Total	167,000

Further details are set out in the following paragraphs.

- 3.2 **Barham Park tree works:** Works on some of the trees and clumps of trees of Barham Park will be required within the parkland. Additionally, some trees are very close to the Barham Park building and also require felling or reduction to protect the building. The estimated cost of these works are as follows: .£62k
- 3.3 **Schedule of works in respect of Windows etc of the Barham Park Building:** An evaluation has been held for an architectural practice to prepare a Windows schedule of all of the existing windows, doors, frames and similar structures of the Barham Park building. The Barham Park building is Locally Listed and Planning Permission is required for any programme of works that will affect the external appearance of the building. This work will include the design for replacement of all windows, frames etc (or retention of the very few original or near original windows) and also design details for other exterior works. A number of frames require replacement while many windows are below modern standards for thermal comfort and energy conservation. The windows schedule will be used for a Planning Application. There would be a common colour scheme for the whole building. The planned cost of the design schedule is estimated at £10k.
- 3.4 **Events Field drainage:** The events field in the west of Barham Park provides for a range of recreation including the play area and the outdoor gym. The field is also host to visiting fairs and events which bring in income to the Trust. There is a range of other infrastructure in the field, which is on underlying London Clay. If there is prolonged wet weather in the spring or summer, there can be problems for access for the fair. That increases the risk of events being cancelled and the loss of income. The existing drainage system appears to have been installed many decades ago, so efficiency has probably reduced with time. Furthermore, there have been various installations of infrastructure around some edges of the field during recent decades, which may have affected the drainage. The current situation is that access for vehicles and event infrastructure can be at risk following prolonged wet weather. Therefore, it is proposed that expenditure is incurred to prepare a survey and design for new drainage and thereafter, to pay for the necessary drainage works. The costs in respect of a survey and design for new drainage is estimated at £5k. The cost of the drainage works is estimated based on estimates for similar schemes at £90k.
- 3.5 776 and 778 Harrow Road, Wembley HA0 2HE were sold by the Trust in 2011.

Funds

- 3.6 Officers submit that the expenditure requested above should come from the Trust's restricted funds rather than the unrestricted funds or from the Council. There are insufficient funds in the Trust's unrestricted funds to pay for the items of expenditure set out above. In the current 2018/19 financial year, the projection to the year end (31 March), assuming that all income is received, is approximately £123k. Total expenditure, including the urgent and current repair works to the building at and near to Unit 7, is estimated at £103k This creates

approximately £20k in year additional unrestricted funds. . There are considerable pressures on the Council's budgets and there are insufficient funds in the Council's departmental budgets for the Regeneration and Environment Department to pay for and subsidise the above-mentioned items of expenditure which are for the benefit of the Trust. The Council has contributed officer time to the professional aspects of the Barham Park building, park and Trust.

- 3.7 Officers submit that the proposed items of expenditure and implementation of the proposed resolution would accord with the spirit of the gift of the land and building which was given to the Council on trust for preserving the same for the recreation of the public. Officers submit that the proposed items of expenditure are necessary for the upkeep and preservation of the land at Barham Park so that it can be used by the public. Brief details of the terms of the Trust are set out in paragraph 5.4 below.
- 3.8 If the Trust Committee approves the recommendations in this report, the Trust will go through the procedure of applying to the Charity Commission for permission under section 282 of the Charities Act 2011 to spend the proposed items of expenditure from the Trust's restricted funds. Details of the procedure and process of applying to the Charity Commission for such permission are set out in section 5 below in the Legal Implications of this report.

4.0 Financial Implications

- 4.1 The table below shows for the year ending 31 March 2019 the Trust is forecast to achieve a closing unrestricted balance of £67k and a closing restricted balance of £416k, with an overall year-end cash fund of £483k. Approval of recommendation 2.1 above to finance £167k expenditure from the restricted funds will reduce the restricted fund balance from £416k down to £249k, assuming the Charity Commission gives permission for the Trust to incur this expenditure from its restricted funds. There is no other call on the restricted funds.

	Year To Date (December 2018) £	Forecast April 18 - March 19 £
Unrestricted Funds		
Opening Balance	47	47
Total Receipts	88	123
Total Payments	-9	-103
Closing Balance	127	67
Restricted Funds		
Opening Balance	416	416
Total Receipts	0	0
Total Payments	0	0
Closing Balance	416	416
Total cash funds	543	483

5.0 Legal Implications

- 5.1 Under section 282 of the Charities Act 2011, a charity may make a resolution to spend funds from a permanent endowment if the capital of the fund consists entirely of property given by a particular individual and the charity's gross income in its last financial year exceeded £1000 and the market value of the endowment fund exceeds £10,000. In such circumstances, a charity's Trustees (or Trust Committee in this instance) may resolve that part or all of the restricted funds arising from the permanent endowment ought to be freed from the restrictions with respect to expenditure of capital that apply. However, in order to do this, it is conditional the Trust Committee is satisfied that the purposes as set out in the Trust to which the endowment funds are subject could be carried out more effectively if the capital of the fund, or a relevant portion of the capital, could be expended as well as income accruing to it rather than just income. In this scenario, once such a resolution is passed by the Trust Committee, a copy of the said resolution must be sent to the Charity Commission together with a statement of reasons for passing it. Such a resolution must not be implemented except in accordance with sections 282 and 283 of the Charities Act 2011. The Charity Commission may direct the Trust to provide it with any additional information or explanation requirements regarding the Trust's application for permission and the circumstances it has applied under section 282 of the Charities Act 2011 and the obligations imposed on the Trust under that section.
- 5.2 Under section 283, the Charity Commission may direct the Trust to give public notice of the resolution in such a manner as specified in the resolution and if it does make such a direction, it must take into account any representations made to it by persons appearing to it to be interested in the charity within the period

of 28 days beginning with the date when public notice of the resolution is given by the Trust.

- 5.3 When considering whether to concur with the proposed resolution under section 284(1) of the Charities Act 2011, the Charity Commission must take into account any evidence available to it as to the wishes of the donor (ie the terms of the Trust) and any changes in the circumstances relating to the charity since the making of the gift of land and building at Barham Park (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).
- 5.4 Under section 284(2) of the Charities Act 2011, the Charities Commission must not concur with such a resolution unless it is satisfied that its implementation would accord with the spirit of the Trust's purposes and that the Trust Committee has complied with the obligations imposed on them by sections 282 and 283 of the Charities Act 2011. The Charity Commission must notify the Trust in writing within 3 months of receipt of the application made under section 282 of the Charities Act 2011 or within 3 months of a direction to give public notice of the resolution. If the relevant three month deadline has lapsed without the Charity Commission notifying the Trust that it does not concur with the proposed resolution, the specified portion of the restricted funds can be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions on spending from the Trust's restricted funds.
- 5.5 The land (including the building) known as Barham Park was given by George Titus Barham on trust to the Council in 1938. The terms of the Trust are "*to preserve the same for the recreation of the public in such manner and subject to such regulations in all respects as the Council may from time to time think proper*".

6.0 Equality Implications

6.1 None.

7.0 Consultation with Ward Members and Stakeholders

7.1 None.

8.0 Human Resource/Property Implications

8.1 None

Report Sign Off

AMAR DAVE

Strategic Director of Regeneration
and Environment